



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200912041

DEC 22 2008

UIL No. 402.00-00

SE: T: EP: RA: Tlf

Legend:

Taxpayer A =

Amount C =

Amount D =

Date 1 =

Date 2 =

Plan X =

IRA Y =

Dear :

This is in response to your letter dated May 8, 2008, supplemented by correspondence dated June 10, 2008 and June 13, 2008, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 402(c)(3)(A) of the Internal Revenue Code (the "Code").

Under penalty of perjury, Taxpayer A submits the following facts and representations in support of the ruling request:

Taxpayer A, age 45, received a distribution totaling Amount D from Plan X. Taxpayer A asserts that her failure to accomplish a rollover within the 60-day period prescribed by section 402(c)(3)(A) of the Code was due to Plan X's failure to provide proper written notice regarding the rollover rules and tax consequences of Plan X distributions, as required under section 402(f) of the Code.

Taxpayer A's former husband was a participant in Plan X, a plan that is treated as a qualified plan under section 7701(j) of the Code. As a result of a divorce settlement, Taxpayer A was entitled to receive a distribution from Plan X.

Taxpayer A represents that at the time the agreement was negotiated she was advised to establish an Individual Retirement Account (IRA), and that the transfer of assets would be accomplished through a direct trustee to trustee transfer.

On Date 1, Taxpayer A established IRA Y. On or about Date 2, Taxpayer A received a check for Amount C (Amount D less Federal income tax withholding) from Plan X. Taxpayer A asserts that she did not receive written notice regarding the rollover rules and tax consequences of Plan X distributions with the check as required under section 402(f) of the Code. Taxpayer A further represents that she made repeated attempts to contact her financial advisor following her receipt of the check from Plan X, but was not able to discuss with him how to proceed with the check until after the 60-day period had expired. Taxpayer A represents that she had limited experience dealing with her own financial affairs. Documentation submitted with this letter ruling request is consistent with Taxpayer A's representations.

Based on the facts and representations, Taxpayer A requests that the Internal Revenue Service (the "Service") waive the 60 day rollover requirement contained in section 402(c)(3)(A) of the Code, with respect to the distribution of Amount D from Plan X.

Section 402(a) of the Code provides that, except as otherwise provided in this section, any amount distributed to any distributee by an employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 of the Code.

Section 402(c)(1) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid.

Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement arrangement (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day rollover requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31)(A) of the Code provides the rules for governing "direct transfers of eligible rollover distributions." Section 401(a)(31)(E) of the Code provides that, for purposes of Code section 401(a)(31), the term "eligible retirement plan" generally has the meaning given such term by section 402(c)(8)(B). Pursuant to section 402(c)(8)(B) an IRA is an "eligible retirement plan." Thus, a direct transfer defined in Code section 401(a)(31), may be made to an IRA.

Section 1.401(a)(31)-1 of the Income Tax Regulations, Question and Answer-15, provides in relevant part, that an eligible rollover described in Code section 401(a)(31) is a distribution and rollover of the eligible rollover distribution and not a transfer of assets and liabilities.

Section 402(f) of the Code requires the plan administrator to provide a written notice to recipients of distributions eligible for rollover treatment. This notice must explain the provisions under which the recipient may have the distribution directly transferred to another eligible retirement plan, must explain that the withholding of tax on the distribution is required if it is not directly transferred to another eligible retirement plan, and must explain that the recipient will not be subject to tax if the distribution is transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A demonstrates that Plan X did not provide Taxpayer A with proper notice of the 60-day rollover rule as required under section 402(f) of the Code, and that Taxpayer A's attempts to obtain advice as to how to proceed were unsuccessful. As a result, the failure to deposit Amount D into IRA Y within the 60-day period was beyond the reasonable control of Taxpayer A.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the rollover of Amount D from Plan X to IRA Y. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to deposit Amount D into IRA Y or some other eligible rollover IRA. Provided all other requirements of section 402(c) of the Code, except the 60 day rollover requirement are met with respect to such contribution, the transaction will be considered a valid rollover within the meaning of section 402(c)(1) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this ruling is being sent to your authorized representative in accordance with a power of attorney on file with this office.

If you wish to inquire about this ruling, please contact \*\*\* I.D. No. \*\*\*, at \*\*\* or \*\*\* (FAX). Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

  
for Donzell H. Littlejohn, Manager  
Employee Plans, Technical Group 4

Enclosures:  
Deleted Copy of Ruling Letter  
Notice of Intention to Disclose